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TULARE COUNTY SUPERIOR COURTS  
STATE OF CALIFORNIA, VISALIA DIVISION

In Re SEARCH WARRANT #013487  
  
YORAI BENZEEVI,  
  
Moving Party,  
  
v.  
  
SUPERIOR COURT OF THE COUNTY OF  
TULARE,  
  
Respondent,  
  
TULARE COUNTY DISTRICT ATTORNEY,.  
  
Real Part in Interest.

CASE NO: \_\_\_\_\_  
  
REAL PARTY IN INTEREST'S  
RESPONSE TO NOTICE OF MOTION  
AND MOTION OF DR. YORAI  
BENZEEVI FOR RETURN OF SEIZED  
PROPERTY AND RELATED  
EVIDENTIARY HEARING; REQUEST  
TO CONTINUE TO SET DATES FOR  
EVIDENTIARY HEARING  
  
Date: October 5, 2018  
Time: 2:00 pm  
Dept: 13

Respondent, the People of the State of California, by and through their  
attorneys, TIM WARD, District Attorney, and TREVOR HOLLY, Deputy District Attorney,  
submit this REAL PARTY IN INTEREST'S RESPONSE TO NOTICE OF MOTION AND  
MOTION OF DR. YORAI BENZEEVI FOR RETURN OF SEIZED PROPERTY AND  
RELATED EVIDENTIARY HEARING; REQUEST TO CONTINUE TO SET DATES FOR  
EVIDENTIARY HEARING related to search warrant #013487. This motion is based upon the  
pleadings, points and authorities, evidence, and argument presented at the hearing of the matter.

REAL PARTY IN INTEREST'S RESPONSE TO MOVING PARTY'S NOTICED MOTION FOR  
RETURN OF SEIZED PROPERTY

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## **PROCEDURAL HISTORY<sup>1</sup>**

This matter is presently set for a brief hearing on October 5, 2018, to receive this Court's ruling regarding unsealing affidavits. There is nothing in the record that indicates this date is set for an evidentiary hearing as requested by the moving party. It appears the moving party is requesting the Court hold a *sua sponte* non-statutory evidentiary on this date.

The People were served with this Notice of Motion and Motion on or about September 20, 2018 at approximately 4:00 pm. At that time, Deputy District Attorney Holly was preparing for trial and was unable to fully review the movant's papers at that time. DDA Holly is the only attorney assigned to this matter. At the August 28, 2018 hearing, he indicated that he would be in trial during the week of October 5, 2018, but that he would be able to recess from trial to receive this Court's ruling on the unsealing of the affidavits.

Upon review of the instant motion, it appears that the moving party is requesting this Court simply accept their version of the facts as set forth and release the funds at issue on October 5, 2018. An evidentiary hearing is not possible on October 5, 2018 without prejudicing the People's ability to present their case. The People estimate that they may call over 20 witnesses on their behalf. It is unrealistic to serve all witnesses upon such short notice.

Additionally it is unknown how many witnesses the movant may call. To request a full evidentiary hearing on October 5, 2018, is at the least impractical, and at the most prejudicial to the People. The People are not opposed to such a hearing, only the short notice Movant has unreasonably presented. The People request that the hearing on October 5, 2018, be limited to the receipt of the Court's ruling on the unsealing of the affidavits.

## **STATEMENT OF FACTS**

As noted in the footnote on page two (2), the Statement of Facts has been omitted in this Response. California Code of Civil Procedure §1003 requires that all moving and supporting papers be served 16 *court* days before the hearing (for personal service). The

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<sup>1</sup> As the Court is well versed in the history of this matter, and out of respect for Judicial economy, the Statement of Facts has been omitted.

1 People were served on September 20, 2018. 16 court days from the October 5, 2018 hearing is  
2 September 13, 2018. Given the shortened amount of time due to the untimely service, the  
3 People request that their response to the Movant's statement of facts, the People's statement  
4 of facts, and further points and authorities regarding Dr. Benzeevi's thefts and  
5 misappropriations will take additional time. As such, the People will be filing their statement  
6 of facts and points and additional points and authorities as a supplement to this motion on  
7 October 2, 2018.

### 8 ARGUMENT AND AUTHORITY

#### 9 THE PEOPLE REQUEST A FULL EVIDENTIARY HEARING

10 Statutory law and case law clearly establish that stolen or embezzled property should  
11 be seized and returned to its rightful owner (PC § 1407, PC § 1408, and PC § 1409). "Clearly,  
12 the People have the right to detain any property which it is unlawful to possess.." (*People v.*  
13 *Superior Court (McGraw)* (1979) 100 Cal. App. 3d 154). However, a subject who has had  
14 property seized does have a due process right to an evidentiary hearing. (*Ensoniq Corp. v.*  
15 *Superior Court* (1998) 65 Cal. App. 4<sup>th</sup> 1537, 1549). Both *Ensoniq & McGraw* involved  
16 criminal cases that had concluded, whereas this case is being actively investigated. However,  
17 while the People do anticipate filing charges regarding the Celtic transactions, we do not  
18 anticipate doing so in the near term. Given the length of time from now until charges are  
19 likely to be filed, we believe that an evidentiary hearing to determine the ownership of the  
20 funds is appropriate. The hearing should be designated a "special proceeding" as no criminal  
21 action has yet been filed. (*Ensoniq Corp. v. Superior Court*, (1998) 64 Cal. App. 4<sup>th</sup>, 1537,  
22 1547).

23 There is little guidance as what the procedures for such a hearing are, a sentiment  
24 echoed by the Court in *Ensoniq*; "However, as the court noted in McGraw, section 1411 is  
25 silent as to the appropriate procedure to follow in making the initial determination as to  
26 whether property seized under a search warrant is in fact stolen, when there is no conviction  
27 of theft and no criminal charge pending. (Id. at p. 159, 160 Cal.Rptr. 663.) Sections 1408–  
28 1410 are likewise silent as to how the property is to be deemed stolen or embezzled absent a

REAL PARTY IN INTEREST'S RESPONSE TO MOVING PARTY'S NOTICED  
MOTION FOR RETURN OF SEIZED PROPERTY

1 charge or conviction.” (*Ensoniq Corp. v. Superior Court*, (1998) 64 Cal. App. 4<sup>th</sup>, 1537,  
2 1539).

3  
4 It is clear that it must be an evidentiary hearing (*People v. Superior Court (McGraw)*  
5 (1979) 100 Cal. App. 3d 154,160, *Ensoniq Corp. v. Superior Court*, (1998) 64 Cal. App. 4<sup>th</sup>,  
6 1537, 1539). A hearing is a proceeding of relative formality with definite issues of fact or law  
7 to be tried, in which witnesses are heard and evidence is presented. (Black’s Law Dictionary,  
8 6<sup>th</sup> Ed). “A hearing is generally understood to be a proceeding where evidence is taken to the  
9 end of determining an issue of fact and a decision made on the basis of that evidence. (*People*  
10 *v. Ivenditti* (1969) Cal. App. 2d 178, 180). Therefore, the People are requesting a full hearing,  
11 with the opportunity to call sufficient witnesses and present competent evidence that the funds  
12 at issue were unlawfully possessed by Dr. Benzeevi.

13 I. THE MOVANT’S HAVE NOT SUBMITTED ACTUAL EVIDENCE SUFFICIENT TO  
14 BASE A RULING UPON.

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16 As part of their motion, movants have submitted several declarations, newspaper  
17 articles, and other exhibits to their motions. The People appreciate the courtesy, and are  
18 always happy to receive additional evidence. However, the majority of the exhibits are not  
19 admissible under the rules of evidence. The newspaper articles regarding Cerner are  
20 inadmissible hearsay. The evidence by their hired accountant is expert testimony. To be  
21 admissible, he must actually testify, state the evidence, statements, and documents he  
22 reviewed, as well as his methodology and basis for his opinion. A mere report is not  
23 admissible. The declarations are likewise inadmissible as hearsay absent a stipulation or  
24 special ruling from the Court. Therefore, at this time, no actual evidence has been presented  
25 to the Court.

26 The Court may wish adopt specific rules and procedures for the hearing, as it is ill  
27 defined by the current law. However, at the moment, insufficient time has been granted to  
28 decide exactly how the proceeding should proceed and what the rules for the proceeding  
should be. This is a motion brought by the movant, so if the Court intends to proceed it  
should require that the movant present their evidence in open court first and then provide an

REAL PARTY IN INTEREST’S RESPONSE TO MOVING PARTY’S NOTICED  
MOTION FOR RETURN OF SEIZED PROPERTY

1 opportunity for The People to put their case on.  
2

3 **CONCLUSION**

4 The People request to have a full evidentiary hearing and are confident that there is  
5 sufficient evidence to establish that the funds seized from Dr. Benzeevi's Bank account were  
6 unlawfully obtained by him and that they are the proceeds of theft and fraud. However, the  
7 People have a right to a full evidentiary hearing on the matter, with the opportunity to present  
8 witnesses and evidence. This will not be possible on the date requested by the movant.  
9 Therefore, we respectfully request the Court set a date, or series of dates, providing sufficient  
10 time for the matter to be heard.

11 Dated: September 28, 2018

12 Respectfully submitted,

13 TIM WARD  
14 DISTRICT ATTORNEY

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16 TREVOR HOLLY  
17 DEPUTY DISTRICT ATTORNEY  
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